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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/691,683 | 10/23/2003 | William L. Lewis | 521300/00001A | 6632 |

7590 12/13/2005

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| EXAMINER |
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HALE, GLORIA M

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| ART UNIT | PAPER NUMBER |
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3765

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/691,683 | LEWIS, WILLIAM L. | |
| | Examiner | Art Unit | |
| | Gloria Hale | 3765 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12,13 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12,13 and 19-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-11 and 14-18 have been canceled. Claims 12,13 and 19-22 remain.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 19 not claims a "wind resistant material". There is no support in the original specification or disclosure that the material is wind resistant.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears that claims 20-22 are not complete wherein the method step including the provision of the apparatus to insert the feet and legs therein has not been included prior to the step of inserting the legs therein. The inclusion of the fastener of claim 21

and materials of claims 22 and 23 does not further limit the method steps. In claim 21 there is no antecedent basis for "the wind resistant material" in claim 12. The term "wind resistant" was not introduced until claim 19.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12,13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 1,915,044) in view of Carson (US 4,893,586).

Anderson discloses an apparatus (A) for keeping a person warm including a generally tubular length of material (3) as seen in figures 1 and 2 (page 1, line 32) having an open end (at 7 in figures 1 and 2), a closed end (at 6 as seen in figures 1 and 2), an inner surface (as seen in figure 2), an outer surface (as seen in figures 1 and 2); an elastic band (7, seen in figures 1 and 2, described on page 1, lines 47-50), encircling the open end and a protective material 6 as seen in figures 1 and 2, described on page 1, lines 42-47) secured to the outer surface of the closed end of the apparatus.

However, Anderson does not specifically disclose the apparatus as including a fastener attached to the protective material. The recitation "for securing the closed end of the apparatus to an external surface" has not been given any patentable weight since it does not further limit the structure of the fastener. Carson discloses a tubular bag structure for keeping a user warm, including a fastener, grommet 18 on the protective

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material of the bag 1 of Carson as seen in figure 1, to secure the bag/mat to a surface such as the ground 2 as desired during use. (See Carson, col. 2, lines 53-54; col. 1, lines 58-59). Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a fastener, grommets 18 as described by Carson on the tubular apparatus of Anderson to secure the Anderson apparatus to a surface, such as the ground at an outdoor sports event, so that the member does not blow about and twist about the wearer. In regard to claim 13, Anderson discloses the pockets (8) located as claimed as seen in figures 1 and 2 and as described on page 1, line 95 – page 2, line 1. In regard to claim 19, the material of the Anderson apparatus is “wind resistant” as broadly claimed since a heavily knit material described on page 1, line 35 resists wind. In regard to claim 20, Anderson discloses the method of keeping a wearer warm comprising the steps of inserting one or both feet and legs in the generally tubular length of material having an open end, closed end, inner and outer surface, elastic band, protective mat and fastener a claimed and as discussed above in regard to claim 12.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Carson as applied to claims 12,13 and 20 above, and further in view of Hutto (US 5,630,439) or the Campmor New Year 2000 Catalog, page 4- Cherry tree Nylon/Polartec Snow Suit.

In regard to claims 21 and 22, Anderson and Carson disclose the invention substantially as claimed. However, they do not specifically disclose the material of the tubular apparatus as being the specific “wind resistant” materials as claimed and the

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inner and outer surface as being one of those listed. The Examiner takes Official Notice that it is well known to construct protective, weatherproof/resistant garments and protective gear of GORETEX such as disclosed by Hutton (col. 2, line 49) to protect a wearer from wet, damp and cold weather or of Nylon and POLARTEC fleece or layered combinations of those materials to achieve the desired warmth and protection from the elements. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the protective cover of Anderson to construct it of any well known protective materials to achieve a desired level of protection such as making it of GORETEX, POLARTEC fleece and/or nylon or combinations thereof. It is also within the skill of one of ordinary skill in the art to select a known material that has a known benefit in order to achieve that benefit of that known material when constructing an article such as when selecting the certain types of fabrics in the construction of the article above. In re Leshin 125 USPQ 416.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wellman (US 6042189) disclose a tubular cover garment with a fastener on an outer surface to secure the garment/wearer to a surface while the garment is worn. Li (US 5,416,938) discloses a structure with a fastener to secure a wearer to a surface.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gloria Hale
Primary Examiner
Art Unit 3765
